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EXECUTIVE SECRETARY

March 21, 2000

H. Lynn Greer, Jr.  
Director, Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

Re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay  
Telephone Service as Required by FCC Docket 96-128  
Docket No. 97-00409

Dear Director Greer:

I am writing to you, on behalf of the Tennessee Payphone Owners Association (TPOA), in your capacity as the Hearing Officer in the above-captioned docket. The purpose of this letter is to request that you, as the Hearing Officer, re-convene these proceedings and fix a tentative schedule for the final resolution of the outstanding issues.

Approximately three years ago, the TRA opened this docket to investigate the rates charged by incumbent, local exchange telephone companies to pay telephone providers. The proceeding was initiated in response to orders issued by the FCC requiring that all payphone charges be cost-based, non-discriminatory, and consistent with Section 276 of the Federal Telecommunications Act of 1996 and the FCC's guidelines. The FCC ordered that such rates be implemented effective April 15, 1997.

As the payphone docket moved toward a hearing, the TRA also initiated a proceeding to fix cost-based rates for all unbundled network elements (UNE's) of local exchange carriers. TRA Docket 97-01262. It soon became apparent that both of these dockets addressed similar issues (i.e., the cost of a loop) and that it would make sense to postpone the payphone proceeding until after the UNE docket had been completed.

H. Lynn Greer, Jr.  
March 21, 2000  
Page 2

Therefore, by agreement of all parties, the determination of cost-based payphone rates was delayed until after the agency had determined cost-based UNE rates. The parties also agreed that whatever payphone rates were finally adopted would apply retroactively to April 15, 1997. That is how matters have stood for the last three years. During that time, payphone owners in Tennessee have continued to pay the interim rates charged by incumbent local exchange carriers.

It is now time, however, to re-open these proceedings. There are three reasons for this:

First, the UNE proceeding appears to be finally reaching a conclusion. All filings have been made; all that apparently remains is the determination of UNE rates.

Second, the FCC has just released a decision clarifying the guidelines for the determination of payphone rates. (A copy of the FCC Order is attached.) The Order makes clear that, absent unusual circumstances, payphone rates should be the same as, or consistent with, cost-based UNE prices. See FCC Order, paragraph 11. The FCC Order also declared that incumbent carriers must take into account all revenue from EUCL, PICC, and CCL charges so that there is no "double counting" of costs. FCC's decision has, therefore, greatly simplified the issue in this proceeding. In order to avoid any delays later, the parties should reconvene now to determine the impact of the Order and how to implement the Order as soon as the UNE docket is completed.

Third, virtually all TPOA members are small businessmen and businesswomen. For nearly three years, they have been waiting for the TRA to fix cost-based payphone rates and to order refunds retroactive to April 15, 1997. This delay has caused a substantial financial hardship for many TPOA members. As a result, many members have removed pay telephones from marginal locations such as public buildings, parks and in rural areas of Tennessee. Other owners have simply gone out of business.


In light of the FCC's recent Order, it is clear that the TRA and the parties were correct in agreeing to delay these proceedings pending the outcome of the UNE docket. Nevertheless, the parties could not have anticipated that the delay would be so protracted or so economically burdensome.

H. Lynn Greer, Jr.  
March 21, 2000  
Page 3

For these reasons, TPOA is anxious to re-convene this proceeding as soon as possible so that, as soon as UNE prices are set, this docket can also be completed.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:   
Henry Walker  
Counsel for TPOA

HW/tlm  
Enclosure

cc: Dennis McNamee, Esq. (w/encl.)  
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Chairman Melvin Malone (w/encl.)  
Director Sara Kyle (w/encl.)  
David Waddell (w/encl.)

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of )

Wisconsin Public Service Commission ) CCB/CPD No. 00-1

Order Directing Filings )

ORDER

Adopted: March 1, 2000

Released: March 2, 2000

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we direct the four largest incumbent local exchange carriers (LECs) in Wisconsin to submit to the Federal Communications Commission (Commission) copies of the currently effective tariffs for intrastate payphone service offerings that have not been determined by the Wisconsin Public Service Commission (Wisconsin Commission) to comply with section 276 of the Communications Act of 1934, as amended (Act) and the Commission's rules.

II. BACKGROUND

2. Section 276 of the Act establishes requirements designed to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public. In its Payphone Reclassification Proceeding, the Commission adopted regulatory requirements implementing section 276. The Commission required, inter alia, that incumbent LECs file tariffs for basic payphone lines at the state level only, and that unbundled features and functions provided by incumbent LECs to their own payphone operations or to others be tariffed at both the state and federal levels. The Commission required that all incumbent LEC payphone tariffs filed at the state level be cost-based, nondiscriminatory, and consistent with both section 276 and the Commission's Computer III tariffing guidelines. The Commission determined that the rates assessed by LECs for payphone services tariffed at the state level must satisfy the requirements that the Commission applies to new interstate access service proposed by incumbent LECs subject to price cap regulation (the "new services test"). The Commission stated that it would rely initially on state commissions to ensure that the rates, terms, and conditions applicable to the provision of basic payphone lines comply with the requirements of section 276. The Commission also determined that state commissions that are unable to review these tariffs may require incumbent

LECs operating in their states to file these tariffs with the Commission. The Common Carrier Bureau

(Bureau) has emphasized that the Commission retains jurisdiction under section 276 to ensure that all

requirements of section 276 and the Payphone Reclassification Proceeding are met.

3. On November 6, 1997, the Wisconsin Commission issued a letter order in its Docket 05-TI-156. In the letter order, the Wisconsin Commission held that its own jurisdiction to investigate the rates charged by LECs to payphone service providers "is very narrowly circumscribed to enforcing a prohibition on cross subsidy...and discriminatory practices." The Wisconsin Commission also stated that the statutory remedies available under Wisconsin law "only address whether the retail rates charged by telecommunications utilities for competitive telecommunications service recover the underlying cost for that service." Accordingly, the Wisconsin Commission found that it lacks jurisdiction under state law to ensure that the rates, terms, and conditions applicable to providing basic payphone services comply with the requirements of section 276 of the Act and the Commission's implementing rules.

4. On October 28, 1998, the Bureau sent a letter to the Wisconsin Commission stating that, after a review and consideration of the Wisconsin Commission's November 6, 1997 letter order, it

was our intention to require the four largest LECs in Wisconsin to file with the "FCC tariffs that set

forth the rates, terms, and conditions associated with pay phone services, along with the required supporting documentation."

### III. DISCUSSION

#### III

IV 5. The Wisconsin Commission's stated lack of authority to review these payphone service

offerings invokes this Commission's obligations under section 276 and the Commission's Payphone

Orders to promote competition among payphone service providers and ensure the widespread deployment of public payphone service, among other things. We therefore direct the four largest LECs in Wisconsin to submit currently effective intrastate tariffs that set forth the rates, terms, and conditions associated with payphone services to the Commission, along with the supporting documentation in compliance with the requirements of section 276 and the Commission's implementing rules, including the new services test. More specifically, in order to ensure that the

tariffs for the four largest LECs in Wisconsin comply with section 276 of the Act, and pursuant to

the Commission's Payphone Orders, we direct Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin),

GTE North Incorporated, subsidiaries of Century Telephone Enterprises Inc., and the Telephone Data Systems, Inc. to submit tariffs for intrastate payphone service offerings to this Commission, together with the supporting documentation, as detailed below, necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

6. The submissions we require these incumbent LECs to make are not official tariff filings subject to or required by section 203 of the Act. Rather, the information submitted is necessary to permit us to review the incumbent LECs' rates, terms and conditions for a local service, payphone line service, that is normally tariffed in the intrastate jurisdiction. We require these submissions under authority of section 276 of the Act, in order to ensure that the incumbent LECs fully comply with our Payphone Orders. If we find an incumbent LEC's payphone line rate is not in compliance with the new services test or other section 276 requirements, we have authority, pursuant to section 205, 47 U.S.C. § 205, and our general authority under section 4(i) of the Act, 47 U.S.C. § 154(i), to make a determination as to the maximum permissible rate and to require the incumbent LEC to charge no more than that rate, as a measure necessary to the execution of the Commission's section 276 functions. 47 U.S.C. § 205(a); see also 47 U.S.C. §§ 154(i) and 276(b), (c).

7. We intend to review these submissions in a procedural manner similar to tariff review proceedings such as those conducted for "open network architecture" (ONA) tariffs under Computer III tariffing guidelines. Except as otherwise directed, the incumbent LECs should file a copy of a tariff and supporting information, in accordance with the ordinarily applicable Commission rules (e.g., usage-sensitive elements whether specified in the payphone line tariff or cross-referenced to another tariff as well as flat rate elements) and should provide cost support for each rate element in accordance with the cost support requirements described below. Rates, terms and conditions for other services commonly used by payphone service providers ("PSPs") (e.g., call screening services) should also be included. For each rate element, the incumbent LEC must submit complete cost studies with full documentation. Summaries of cost study results are not acceptable. The initial submissions will be subject to public comment, and LECs will have the opportunity to respond to the comments that are filed.

8. In order to avoid unnecessary confusion and delay in the implementation of Payphone Order-compliant tariff filings, we set forth briefly below some of the methodological principles applied under Computer III and other relevant FCC proceedings addressing the application of the new services test and cost-based ratemaking principles to services and facilities offered by incumbent LECs to providers of services that compete with incumbent LEC services. While we have allowed some flexibility in the application of these principles in particular contexts, absent a persuasive justification, we expect the incumbent LECs to apply these principles consistently and rigorously to the cost justification of rates for services needed by incumbent LECs' payphone service competitors.

9. To satisfy the new services test, an incumbent LEC filing payphone line rates must demonstrate that the proposed rates do not recover more than the direct costs of the

service plus "a just and reasonable portion of the carrier's overhead costs." Costs must be determined by the use of an appropriate forward-looking, economic cost methodology that is consistent with the principles the Commission set forth in the Local Competition First Report and Order.

10. With respect to the calculation of direct costs, our longstanding new services test policy is to require the use of consistent methodologies in computing direct costs for related services. Cost study inputs and assumptions used to justify payphone line rates should, therefore, be consistent with the cost inputs used in computing rates for other services offered to competitors.

11. In determining a just and reasonable portion of overhead costs to be attributed to services offered to competitors, the LECs must justify the methodology used to determine such overhead costs. Absent justification, LECs may not recover a greater share of overheads in rates for the service under review than they recover in rates for comparable services. Given that the new services test is a cost-based test, overhead allocations must be based on cost, and therefore may not be set artificially high in order to subsidize or contribute to other LEC services. For purposes of justifying overhead allocations, UNEs appear to be "comparable services" to payphone line services, because both provide critical network functions to an incumbent LEC's competitors and both are subject to a "cost-based" pricing requirement. Thus, we expect incumbent LECs to explain any overhead allocations for their payphone line services that represent a significant departure from overhead allocations approved for UNE services.

12. We also note that the forward-looking cost studies we have required in the contexts described above produce cost estimates on an "unseparated" basis. In order to avoid double recovery of costs, therefore, the LEC must demonstrate that in setting its payphone line rates it has taken into account other sources of revenue (e.g., SLC/EUCL, PICC, and CCL access charges) that are used to recover the costs of the facilities involved.

13. At this time, this Order only applies to the LECs in Wisconsin specifically identified herein. No other Wisconsin LECs are being required at this time to submit data to the Commission. As stated above, all copies of tariffs, including supporting information, must comply with Part 61 of our Rules, 47 C.F.R. §§ 61.1 et seq. We require that these copies of tariffs and supporting documentation be filed by May 12, 2000.

#### IV. procedural matters

III 14. An original and six copies of all documents must be filed with the Office of the Secretary,

Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C.

20554. In addition, parties must file two copies of any such documents with the Competitive Pricing Division, Common Carrier Bureau, 445 12th Street, S.W., Room 5-A207, Washington, DC 20554. Parties must also deliver one copy of such documents to ITS, Inc., the Commission's

duplicating contractor, at its office at 1231 20th Street, N.W., Washington, DC 20036. The documents should reference CCB/CPD No. 00-1.

15. This matter shall be treated as a "permit but disclose" proceeding and subject to the "permit but disclose" requirements under 47 C.F.R. § 1.1206(b), as revised. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written ex parte presentations in "permit but disclose" proceedings are set forth in Section 1.1206(b) as well.

#### V. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to sections 205, 276 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 276, and through authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, Ameritech, GTE, Century and TDS shall file by May 12, 2000, tariffs as described above for intrastate payphone service offerings in Wisconsin with the Commission, together with all supporting documentation described above necessary to demonstrate compliance with the requirements of section 276 and the Commission's implementing rules.

#### FEDERAL COMMUNICATIONS COMMISSION

Yog R. Varma  
Deputy Chief  
Common Carrier Bureau